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UNITED STATES DISTRICT COURT
6
DISTRICT OF NEVADA
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9 Thomas Thatcher Schemkes, et al.,
10 Plaintiffs,
11 v.
12 Jacob Transportation Services, LLC,
13 Defendant.

Case No. 2:11-cv-355-JAD-NJK

**Order on Plaintiffs' Proposed Notice
of Collective Action [Doc. 11]**

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15 **Discussion**

16 Plaintiff Thomas Thatcher Schemkes and other limousine drivers bring this collective
17 action on the theory that Las Vegas limousine company Jacob Transportation Services, LLC¹
18 did not pay its drivers minimum wage. Doc. 4 at 2-3. Plaintiff drivers² claim that they were
19 obligated to be on the job for 8-12 hours per day; however, since they were paid only per
20 “trip” taken, their total wages fell below the prevailing minimum wage. *See generally id.*
21 Plaintiffs seek relief under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* for unpaid
22 minimum wage, as well as “interest . . . liquidated damages . . . injunctive and other equitable
23 relief and reasonable attorney’s fees.” *Id.* at 2. They allege claims for the following FLSA
24 violations: unlawful failure to pay minimum wage (Count 1), unlawful failure to pay

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26 ¹ The Amended Complaint lists two additional defendant entities—Presidential Limousine, and CLS
Nevada, LLC. Doc. 4 at 2-3. However, these entities are no longer part of this suit. *See Doc. 11-1 at 3.*

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28 ² Named plaintiffs are Thomas Thatcher Schemkes, Brian McKenna, James Hammond, and Gregory
Greene. Doc. 4 at 3. Plaintiffs purport to represent a number of prospective plaintiffs, i.e., similarly situated
limousine drivers.

1 overtime compensation (Count 2), and unlawful deductions from wages in violation of the
 2 FLSA (Count 3). *Id.* at 6-11.

3 The case was originally consolidated with Case No. 2:09-cv-466, another collective
 4 action brought against several Las Vegas limousine companies.³ Doc. 8. The putative class,
 5 which included the Schemke plaintiffs, was granted conditional certification. Docs. 56, 63.⁴
 6 Thereafter plaintiffs in No. 09-466 applied for a Notice of an FLSA Collective Action, Doc.
 7 132, which was supported by a Declaration. Doc. 133. This Notice was granted by the U.S.
 8 Magistrate Judge. Doc. 150. The U.S. District Judge then granted summary judgment
 9 against the Plaintiffs, and No. 11-355 was unconsolidated from No. 09-466. Doc. 159.

10 A copy of the Court's Order granting summary judgment was filed in the now-
 11 unconsolidated No. 11-355 docket. Doc. 10. In the Court's Order, the Court carried over a
 12 Collective Action Notice from No. 09-466. *See id.* The Court's Order listed a number of
 13 changes to be made to the proposed notice. These changes were, *inter alia*:

- 14 1. All references to Bentley Transportation and Executive Coach and Carriage
 should be removed from the notice.
- 15 2. The Description of the case was to be “replaced with the description from
 Jacob Transportation’s proposed notice in [No. 09-466 137].”
- 16 3. No description of the counterclaims in this case should be included.
- 17 4. The “court caption,” as modified to reflect the “new posture of the case,” was
 to be used, as opposed to counsel’s letterhead.

18 Doc. 10 at 5-7.⁵ The Court ordered Schemkes to “submit a new Notice of Collective Action
 19 for the Court’s approval . . . incorporating the changes ordered herein.” Doc. 10 at 10. The
 20 Court also instructed Defendants to object to the new notice only to the extent that any such
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 23 ³ No. 2:09-cv-466, Doc. 1. Plaintiff moved to amend his Complaint in No. 09-466; the motion was
 24 denied in all material respects. Doc. 113. The unconsolidated case is currently on appeal, although the
 appeal pertains to the taxation of costs and does not reach the merits of the underlying dispute.

25 ⁴ This certification had actually occurred in yet another case, 2:09-cv-1100, which was ultimately
 26 consolidated with 09-466. Docs. 158, 159. In 09-1100, the parties stipulated to removal of Presidential
 Limousine from the Order. Doc. 175. References to docket entries in 09-1100 have been omitted to
 27 minimize confusion.

28 ⁵ The Court also found that Plaintiffs had included a request for equitable tolling and their use of a
 third-party administrator to distribute notice of the claims. Doc. 10 at 8-9.

1 motion pointed to “discrepancies between this Order and the new Notice.” *Id.*⁶ Schemkes
 2 then submitted a new Notice of Collective Action, to which Defendant has objected. Docs.
 3 11, 12.

4 Plaintiff’s new proposed notice contains a number of modifications that go beyond the
 5 straightforward, specific, and limited modifications ordered by the Court in Doc. 10. For
 6 example, the first page of the proposed notice tinkers with the verbiage on the initial
 7 explanation of the suit, exchanging “you may be affected by a currently pending collective
 8 action lawsuit” for “you may have rights affected by a currently pending collective action.”
 9 No. 09-466 Doc. 133, at 5; No. 11-355 Doc. 11-1 at 2. The new proposed notice also
 10 contains three new statements, found nowhere in the original notice: “This is not a
 11 solicitation from a lawyer,” “The U.S. District Court for Nevada authorized this notice,” and
 12 “Please read this notice carefully as your legal rights may be affected.” *Id.* These are only
 13 two examples of how the new proposed notice has been modified in unanticipated ways.
 14 Defendant’s objections list the modifications more exhaustively, *see* Doc. 12, but the Court
 15 need not earmark every discrepancy to conclude that the proposed notice is unacceptable in
 16 its current iteration, and must be rejected as crafted.

17 The Court is vested with discretion to actively manage the collective-action notice
 18 process “in a manner that is orderly, sensible, and not otherwise contrary to statutory
 19 commands or the provisions of the Federal Rules of Civil Procedure.” *Hoffman-La-Rouche,*
 20 *Inc. v. Sperling*, 493 U.S. 165, 170 (1989). This ensures that the Court, and not the potential
 21 plaintiffs, actually receive “accurate and timely notice concerning the pendency of the
 22 collective action, so that they can make informed decisions about whether to participate.”
 23 *Id.*; *cf. Genesis Healthcare Corp. v. Symczyk*, 133 S.Ct. 1523, 1530 (2013) (“[C]onditional
 24 certification’ does not produce a class with independent legal status, or join additional parties
 25 to the action. The sole consequence of conditional certification is the sending of court-

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 27 ⁶ Along with the Court’s order unconsolidating the two cases, the Court stated that “[u]pon the
 28 request of any party, any prior motion or order specifically identified by the party as affecting the *Schemkes*
 case shall be re-filed by the Clerk of the Court under Case No. 11-cv-355.” Doc. 10 at 10. No request for re-
 filing of any documents from 09-1100 or 09-466 has been made by either party.

¹ approved written notice to employees.”); *Bonilla v. Las Vegas Cigar Co.*, 61 F. Supp. 2d 1129, 1137 (D. Nev. 1999) (“Certification allows the court to control the notice procedure.”).

3 Exercising its discretion to actively intervene in the management of the collective
4 action notice process when the parties have failed to reconcile their differences, the Court
5 orders the current Plaintiffs to contact chambers' judicial assistant at (702) 868-4960 to
6 arrange digital submission of the Notice at Doc. 11-1 at 2-7 in Microsoft Word 2010 format
7 no later than three (3) days after the issuance of this Order and concurrently serve that
8 revision on Defendant. The parties need not submit any further briefing or argument in
9 support of their positions regarding the contents of the notice.

Conclusion

11 **IT IS THEREFORE ORDERED** that Plaintiffs' Proposed Notice of Collective Action
12 [Doc. 11] is **DENIED WITHOUT PREJUDICE**. Plaintiffs shall contact chambers' judicial
13 assistant at (702) 868-4960 to arrange digital submission of its Notice at Doc. 11-1 at 2-7 in
14 Microsoft Word 2010 format no later than three (3) days after the issuance of this Order.

15 || DATED: January 2, 2014.

JENNIFER A. DORSEY
UNITED STATES DISTRICT JUDGE